REMARKS

Upon entry of this Response, claims 1, 4-9, and 11-28 remain pending in the present patent application. Claims 1, 4-9, 11-12, 16, 21, and 27 have been amended, claims 2, 3, and 10 have been canceled, and claim 28 has been added. Applicants request reconsideration of the pending claims in view of the following remarks.

In item 1 of the Office Action, a requirement for new corrected drawings in compliance with 37 C.F.R. §1.121d are required because the drawings are not formal. Accordingly, attached hereto are formal drawings as required. Accordingly, Applicants request that the drawings be approved.

Next, in item 1 of the Office Action, claim 1 has been rejected under 35 U.S.C. §102e as being clearly anticipated by U.S. Patent Publication 2002/0073304 filed by Marsh (hereafter "Marsh"). Applicants note that claim 1 has been amended so as to incorporate the elements of claims 2 and 3 canceled herein. Accordingly, Applicants assert that the rejection of claim 1 under §102 is rendered moot.

In item 5 of the Office Action, claims 2, 3, 4, 6, and 7 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Marsh and further in view of U.S. Patent 6,516,346 issued to Asco et al. (hereafter "Asco") and U.S. Patent 6,502,240 issued to Naclerio (hereafter "Naclerio"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q2d 1955, 1956 (Fed. Cir. 1993). Applicants assert that the rejection of claims 2 and 3 is rendered moot by virtue of the fact that claims 2 and 3 have been canceled herein. However, to the extent that the subject matter of claims 2 and 3 now canceled is now incorporated into claim 1, Applicants assert that the cited combination of references fails to show or suggest each of the elements of claim 1. Accordingly, Applicants request that the rejection of claims 1, 4, 6, and 7 be withdrawn.

To begin, claim 1 has been amended herein to recite as follows:

> 1. A computer system, comprising:
> a central processor unit (CPU);
> a programmable read only memory (ROM) coupled to said CPU, said ROM containing a digital image;
> wherein said CPU programs its ROM during a system initialization, wherein the system initialization further comprises a booting of said system;

a connection to a network and wherein, during the system initialization, said system sends a message to a server coupled to the network to determine whether an upgraded image is available for said ROM; and

wherein, during the system initialization, said system receives an upgraded image and flashes said ROM with the upgraded image if the upgraded image is available for said ROM.

As set forth above, claim 1 recites that the CPU programs its ROM during a system initialization, where the system initialization further comprises a booting of said system. In addition, claim 1 has been amended to incorporate the system sending a message to a server coupled to the network to determine whether an upgraded image is available for said ROM during the system initialization. Also, the system receives the upgraded image and flashes said ROM with the upgraded image during the system initialization if the upgraded image is available for the ROM.

In particular, it is noted that the CPU programs its ROM during the system initialization which comprises a booting of the system. Also, during the system initialization, a message is sent to a server to determine whether an upgraded image is available and, if such message is available, the system receives the message from the server and with the upgraded image and the upgraded image is then updated in the program during the system initialization. Thus, in this embodiment of the present invention the updating of a ROM image in a nonvolatile memory is performed during the initialization of a computer system, where the updated version of the ROM image is requested from a server online and downloaded therefrom automatically during the duration of the system initialization.

In relevant part, the Office Action states:

"Marsh and Asco disclose a system of claim 1 as described above. But Marsh and Asco do not expressly disclose "...during initialization...". However, Naclerio discloses:"...during initialization..."(e.g., column 2, lines 6-66), wherein the system start-up is the initialization." (Office Action, page 5)

Applicants respectfully disagree. Specifically, at column 2, line 61-column 3, line 5, Naclerio states:

"As part of the system start-up process, the print head issues a message to the meter vault which directs the meter vault microcontroller to receive updated program data, only if, that updated program data version has not already been written to the non-volatile memory of the meter vault. The print head then encrypts the updated program data and transmits that encrypted data to the meter vault.

The microcontroller of the meter vault then decrypts the updated program data and stores the data in the non-volatile memory of the meter vault. The program update code is loaded into the print module after fabrication by the manufacturer and prior to shipment."

Applicants assert that Naclerio fails to show the initialization of a computer system, where the initialization further comprises a booting of said system. In particular, when a system is booted, the computer performs the acts necessary to bring it into a state where it can be used by a user. In addition, claim 1 recites that the acts of requesting the ROM image and downloading the ROM image from the server are all performed during the system initialization. This facilitates expedient updating of the ROM image associated with the CPU during the initialization process so that the ROM can be updated before the computer system is brought into a state where it can be employed by a user.

In addition, it is noted that claims 4-8 have been amended so as to depend from claim 1.

For the above reasons, Applicants request that the rejection of claim 1 as amended be withdrawn. In addition, Applicants request that the rejection of claims 4, 6, and 7 be withdrawn as depending from claim 1 as amended.

In addition, in item 12 of the Office Action, claim 8 has been rejected under 35 U.S.C. §193a as being unpatentable over Marsh, Asco, and Naclerio, and further in view of U.S. Patent 6,009,524 issued to Olarig (hereafter "Olarig"). Applicants assert that claim 8 is allowable as depending from claim 1 for at least the reasons as described above with respect to claim 1. Accordingly, Applicants request that the rejection of claim 8 be withdrawn.

In addition, it is noted that claim 5 has not been rejected in the Office Action. Accordingly, Applicants assert that claim 5 is in condition for allowance as depending from claim 1.

In item 14 of the Office Action, claim 9 has been rejected as a method version of claims 1 and 2 as originally filed under the combination of Marsh, Asco, and Naclerio. To the extent that claim 9 has been amended so as to incorporate elements similar in scope with that of claim 1 above, Applicants assert that claim 9 is in condition for allowance for at least the same reasons described above with reference to claim 1 as amended. Accordingly, Applicants request that the rejection

of claim 9 be withdrawn. In addition, Applicants request that the rejection of claims 11-15 be withdrawn as depending ultimately from claim 9.

In addition, Applicants note that claims 11 and 12 have been amended herein to correct for minor antecedent basis issues as well as to correct a misspelling.

Next, in item 16 of the Office Action, claims 16, 17, and 18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Marsh and further in view of Asco. A prima facie case of obviousness is established only when the prior art teaches or suggests all of the elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q2d 1955, 1956 (Fed. Cir. 1993). Applicants note that claim 16 has been amended herein. Thus, Applicants assert that the cited combination of references fails to show or suggest each of the elements of claim 16 as amended. In addition, Applicants assert that the cited combination of references fails to show or suggest each of the elements of claims 17 and 18 as depending from claim 16.

Specifically, claim 16 has been amended to provide as follows:

> 16. A ROM image system, comprising:
> a server; and
> a database accessible by said server, said database storing information regarding ROM images;
> wherein said server receives a message from a computer that is currently undergoing a system initialization to determine if an upgrade exists for the computer's ROM image, uses said information to determine if an upgrade is available for the computer's ROM image and transmits a message to the computer indicating whether an upgrade is available during the system initialization of the computer.

As set forth above, the server receives the message from a computer that is currently undergoing a system initialization to determine whether an upgrade exists for the computer's ROM image. Also, the server transmits the message to the computer indicating whether an upgrade is available during the system initialization of the computer. Applicants assert that neither Marsh nor Asco show or suggest the concept of communicating with a computer as such during the system initialization of the computer itself. In this respect, the embodiment of claim 16 advantageously provides for a server that facilitates the updating of a ROM image in a computer system during the system initialization of the computer system.

Accordingly, Applicants request that the rejection of claim 16 be withdrawn. In addition, Applicants request that the rejection of claims 17 and 18 be withdrawn as depending from claim 16 as amended.

In addition, items 20 and 22 of the Office Action, claims 19 and 20 have been rejected under 35 U.S.C. §103(a). Given that claims 19 and 20 ultimately depend from claim 16 as amended, Applicants request that the rejection of claims 19 and 20 be withdrawn for at least the reasons described above with respect to claim 16.

In addition, claim 21 has been rejected in item 24 of the Office Action. Applicants request that the rejection of claim 21 be withdrawn to the extent that claim 21 has been amended to incorporate subject matter similar in scope with that of claim 1 above. In addition, Applicants request that the rejection of claim 22 be withdrawn as depending from claim 21 as amended.

In addition, claims 23 and 24 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Marsh, Asco, and Martinez, as described, and further in view of Asco. Applicants request that the rejection of claims 23 and 24 be withdrawn as depending from claim 21 as amended herein. In addition, Applicants request that the rejection of claims 25 and 26 for at least the same reasons.

Next, claim 27 has been rejected in a manner similar to claim 16 as originally filed and further in view of Asco. Claim 27 has been amended herein to recite as follows:

> 27.   An enterprise computing system, comprising:
> a plurality of computers, each having a programmable ROM;
> a proxy enterprise ROM server to which the computers couple, said proxy enterprise ROM server communicating with a network external to the enterprise; and
> wherein said proxy enterprise ROM server includes a first storage area for an untested ROM image update, and a second storage area for an approved ROM image update, and at least one of said computers, during its initialization, checks the second storage area for the approved ROM image update to be installed in the at least one of said computers, wherein the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test.

Applicants assert that the cited combination of references fails to show to show or suggest the proxy enterprise ROM server that includes the first and second storage areas for storage of the untested ROM image and the approved ROM image, respectively. In addition, Applicants assert that the cited combination of

references fails to show or suggest that computers during their initialization check the second storage area for the approved ROM image update to be installed in the computers. Also, Applicants assert that the cited combination of references fails to show or suggest that the approved ROM image update comprises the untested ROM image update that has undergone at least one suitable approval test.

Thus, the embodiment of the present invention as set forth in claim 27 as amended reflects the fact that the proxy server enables an technician to test ROM image updates received that are untested to ensure that they can be properly installed in computer systems within the given enterprise. In this respect, a clash between applications within such computers and the ROM image update that cause computer malfunctions are prevented.
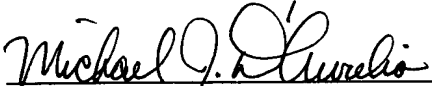
Accordingly, for the above reasons, Applicants request that the rejection of claim 27 as amended be withdrawn.

In addition, claim 28 has been added herein to further claim various embodiments of the present invention. Applicants respectfully request favorable action with respect to claim 28.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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